



**REPUBLIC OF KENYA**

**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**REGULATORY IMPACT STATEMENT  
ON**

**THE CHILDREN (KAFAALAH) REGULATIONS**

**PREPARED BY:**

**NATIONAL COUNCIL FOR CHILDREN'S SERVICES**

**P.O. BOX 6446-00100**

**NAIROBI**

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## **ABBREVIATIONS**

<b>Act</b>	Children Act (Cap 141) Laws of Kenya
<b>ACRWC</b>	The African Charter on the Rights and Welfare of the Child
<b>Council</b>	National Council for Children's Services
<b>UNCRC</b>	United Nations Convention on the Rights and Welfare of the Child

## A. INTRODUCTION

The National Council for Children Services is a State Corporation established under the Children Act (Cap 141) Laws of Kenya, and performs its mandate within the State Department for Social Protection & Senior Citizen Affairs in the Ministry of Labour and Social Protection. Its mandate can be summarised as oversight, regulation, coordination, and advisory on all matters relating to children's affairs in Kenya.

*Kafaalah* is interpreted under section 2 of the Children Act as *the taking in of a child who is deprived of parental and family care and protection by a person professing the Islamic faith who is capable of looking after a child in accordance with this Act.*

Section 12(1) of the Act further lists *kafaalah* as a form of alternative care service whose objective is to: facilitate the provision of parental care and protection of a child in accordance with the best interest and well-being of the child; to place the child as close as possible to his or her usual place of residence; provide a stable, loving and protective home for the child with permanency as the long-term goal; and safeguard the child from abuse, violence or exploitation

The Regulatory Making Authority is the Ministry of Labour and Social Protection in which the Cabinet Secretary responsible for matters relating to children's affairs has the power to make regulations on *kafaalah*. Section 215(b) of the Children Act provides that the Cabinet Secretary shall make regulations for the purposes of regulating and maintaining supervision over the activities of persons or associations purporting to assist in making arrangements for *kafaalah* and the manner in which such arrangements shall be conducted.

In consideration of the above, the Cabinet Secretary relying on proposals submitted by the National Council for Children's Services has prepared the Children (Kafaalah) Regulations. These proposed Regulations are likely to impose financial, economic and social impact in its development and implementation.

## **B. BACKGROUND AND LEGAL CONTEXT OF THE PROPOSED REGULATIONS**

### **International context**

To align with global standards for safeguarding the rights and welfare of children, Kenya ratified the United Nations Convention on the Rights and Welfare of the Child in 1990 and has since made considerable progress in implementing its provisions.

The UNCRC recognizes the family as a fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children. It calls on States to accord families the protection and support necessary for them to fully discharge their responsibilities and especially towards children whose optimal growth and development is dependent on the happiness, love and understanding of family.

However, the UNCRC appreciates the existence of circumstances that cause children to separate from their families. In this regard, Article 9 provides that such separation, as in all actions undertaken concerning children, should be in the best interest of the child. Further, Article 20 of the UNCRC states that a child who is temporarily or permanently separated from family, or in whose own best interests cannot be allowed to remain in that environment, is entitled to special protection and assistance by the State. It calls on States to provide alternative care for such children in accordance with national laws and goes on to highlight forms of alternative care including *Kafaalah*.

The UNCRC also urges States to pay due regard to the desirability of continuity in a child's upbringing as well as their ethnic, religious, cultural and linguistic background when considering solutions. With the growing knowledge of the harm of institutional care to children and the ensuing global shift to family and community care of children separated or at risk of separation from their families, the United Nations General Assembly in 2009 adopted the Guidelines for the Alternative Care of Children. These Guidelines seek to, among other things: support efforts by States to keep children in, or return them to the care of their family or, to find another appropriate and permanent solution, including *kafaalah* of Islamic law and; to guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and the private sectors, including civil society.

### **Regional context**

Kenya is party to the African Charter on the Rights and Welfare of the Child. The Charter recognizes the significance of family in the life of a child and as a platform for the continuity of the African Society and calls on States to deploy mechanisms that seek to preserve families. With the understanding that Africa experiences unique challenges such as civil strife, natural calamities and harmful cultural practices that often cause separation of children from their families, the Charter makes provisions for the alternative care of children. Article 25 states that a child without parental care, or one who is temporarily or permanently deprived of a family environment, should be provided with alternative family care. The Charter emphasizes on the adherence to the Best Interest of the Child as a key guiding principle in any matter concerning a child and adds that a child's ethnic, religious and linguistic background should be given due regard in such care arrangements.

### **Domestic context**

The *Kafaalah* process in Kenya serves as a mechanism necessary to provide permanent family care for children who have been orphaned, abandoned, or rendered vulnerable due to social and economic hardships by persons who profess the Islamic faith.

Article 53 of the Constitution sets out the rights of children in Kenya and states that the best interest of the child is of paramount importance in all matters concerning them. It bestows parental responsibility upon the father and mother of a child in the first instance, in recognition of the family as the natural and fundamental unit of society. Article 43 of the Constitution guarantees the right to social security and further states that persons unable to support themselves and their dependents are entitled to social security.

Aligning with the Constitution, section 12 of the Children Act (Cap 141) states that every child whose parent or guardian is unable to maintain the child has a right to social security. Specifically, section 12(7) highlights *Kafaalah* as a form of social security. *Kafaalah* is a form of alternative family care practiced by the Islamic community and governed largely by Islamic Law.

The Islamic community makes up 11% of Kenya's population (Kenya Housing and Population Census, 2019) and a majority of them are found in the Coastal and North-Eastern parts of Kenya with a significant number spread in major towns in the country.

The Muslim community takes care of orphaned, abandoned, and neglected children within the family set up but with a more focus on children of close relations. Islam protects the rights of children even before birth and that protection is extended throughout as they grow into adulthood.

As Kenya continues to champion for family and community care of children as guided by the Children Act (Cap141) and National Care Reform Strategy for Children in Kenya (2022-2023), it takes cognizant of existing care arrangements within the different communities and endeavours to entrench them in law in order to enhance safeguards for children and guard against possible abuse and exploitation. Section 215 (b) mandates the Cabinet Secretary to make Regulations to regulate and maintain supervision over the activities of persons or associations. These proposed Regulations, therefore, seek to guide the practice of *Kafaalah* as a form of alternative family care.

### **C. REQUIREMENT FOR REGULATORY IMPACT STATEMENT**

#### **Requirements of the Statutory Instruments Act**

The Statutory Instruments Act (Cap 2A) is the legal framework governing the conduct of Regulatory Impact Statement in Kenya. Sections 6 and 7 require that *if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.*

The Statutory Instruments Act further sets out certain key elements that must be contained in the Regulatory Impact Statement namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and

- (e) the reasons why the other means are not appropriate.

Section 5 of the Statutory Instruments Act, requires that a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

### **What is a Regulatory Impact Statement?**

Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of new or existing regulations. A RIS is an analytical report to assist decision makers to arrive at an informed policy decision. As an aid to decision making, RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIS should contain the following elements:

- (a) title of the proposal;
- (b) the objective and intended effect of the regulatory policy;
- (c) an evaluation of the policy issue;
- (d) consideration of alternative options;
- (e) assessment of all their impacts distribution;
- (f) results of public consultation;
- (g) compliance strategies, and
- (h) processes for monitoring and evaluation.

The regulatory impact assessment is usually conducted before a proposed statutory instrument is passed, to provide a detailed and systematic appraisal of the potential impact of the new regulations and to assess whether the regulations are likely to achieve the desired objectives. The Regulatory Impact Statements promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the Regulatory Impact Statement should confirm whether a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. It therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the



benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation and enhancing governmental accountability.

#### **D. REGULATIONS UNDER THE ACT**

Section 215(b) of the Act empowers the Cabinet Secretary to make regulations for purposes of regulating and maintaining supervision over the activities of persons or associations purporting to assist in making arrangements for *kafaalah* and the manner in which such arrangements shall be conducted.

#### **E. PURPOSE OBJECTS AND OVERVIEW**

##### **Scope**

*Kafaalah* is an alternative care arrangement for children in need of protection, based on Islamic principles, where a child is placed under the guardianship of a caregiver who assumes responsibility for their well-being, upbringing, and welfare without conferring legal parentage.

The proposed Regulations comprehensively outline the eligibility criteria and placement process, clearly defining the qualifications and requirements for caregivers. They also detail the roles and responsibilities of all parties involved, ensuring accountability and proper care for the child.

Additionally, the Regulations emphasize the rights and protections afforded to the child, safeguarding their well-being, identity, and access to essential services. Further, they establish a robust supervision and monitoring framework to oversee the implementation of *Kafaalah* arrangements, ensuring compliance with legal and child protection standards. standards for residential and physical facilities within institutions, staff qualifications, staff-to-child ratios, and the administration of child welfare services. They also provide penalties for any violations of these standards.

##### **General objective**

The objective of these proposed Regulations is to provide a framework for a child that deprived of parental and family care and protection by a person professing the Islamic faith who is capable of looking after the child in accordance with the provisions of the Children Act. Further, the proposed

Regulations guide on the procedures for registration as a *kafil*, assessment and placement of a child in *Kafaalah* as provided for under the Children Act.

### **Specific objectives**

Specifically, the implementation of the Regulations is intended to provide for:

- (a) the eligibility criteria for parties involved, define qualifications, requirements and vetting processes for families seeking to provide *Kafaalah*;
- (b) standardized procedures for the identification, assessment and placement of children in line with the provisions of the Children Act.
- (c) the duties of identified key players in the kafaalah arrangement
- (d) review of the terms *kafaalah* arrangement

### **F. PUBLIC PARTICIPATION**

Article 10 of the Constitution provides that public participation is a principle of national governance. This constitutional power entitles the people of Kenya to unfettered access to the process of making public decisions through their involvement.

Section 6 of the Statutory Instruments Act (Cap 2A) provides that the regulation making authority shall undertake consultations before making the statutory instrument particularly where the proposed instrument is likely to have a direct, or a substantial indirect effect on a community or part of the community.

As part of the efforts to ensure an inclusive development of the proposed Regulations, a Technical Working Group was constituted with membership drawn from the Council and key stakeholders with varied expertise. The Council engaged in extensive consultations with various stakeholders and the public. This participatory approach enabled the Technical Working Group to gather diverse perspectives and insights for a comprehensive and effective policy framework.

### **Engagement with key stakeholders**

Pursuant to section 5 of the Statutory Instruments Act (Cap 2A), the Ministry identified key stakeholders, being Kadhis, Muslim scholars, Imams and persons likely to be affected by the proposed Regulations. Consultative engagement was conducted at Merika Hotel in Nakuru County

from 13<sup>th</sup> to 15<sup>th</sup> February 2023 for their invaluable inputs and views. Their input was important in understanding the *kafaalah* arrangement, best practices, and areas requiring interventions

### **Selection of Clustered Regions and Rationale**

To ensure a balanced and representative consultation process, strategic selection of specific regions based on key factors was done, including:

1. Clustering regional boundaries to ensure comprehensive coverage of all counties in Kenya, while optimizing available resources and addressing financial constraints effectively. This strategic approach enhanced accessibility, promoted equitable service delivery, and maximized impact within the allocated budget.
2. Accessibility and Stakeholder – Locations that could accommodate both in-person and online participation were considered to maximize engagement.

The clustered regions ensured a broad and inclusive consultation process, reflecting diverse views from different parts of the country. Below is the schedule that was put up in the different websites and newspapers.

<b>REGION (CLUSTERED COUNTIES)</b>	<b>VENUE</b>	<b>DATE</b>	<b>TIME</b>
<b>Cluster 1</b> – (Uasin – Gishu, west- Pokot, Turkana, Trans – Nzoia, elgeyo-Marakwet, Nandi, Bungoma	<b>Eldoret</b> - <i>Home Craft Centre</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 2</b> – Isiolo, Marsabit, Samburu, Meru, Tharaka – Nithi & Embu	<b>Meru</b> – <i>Kamunde Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 3</b> – Migori, Kisumu, Homabay, Vihiga, Busia, Siaya, Nyamira, Kisii & Kakamega	<b>Kisumu</b> - <i>Mama Grace County Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm

<b>Cluster 4</b> – Narok, Bomet, Nyandarua, Nyeri, Nakuru, Baringo, Laikipia, Kericho & Nairobi	<b>Nakuru</b> - <i>Shaabab Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 5</b> – Taita –Taveta, Kwale, Kilifi, Lamu, Tana- River, Kitui, Makueni, & Mombasa	<b>Mombasa</b> – <i>Tononoka Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 6</b> – Kiambu, Muranga, Kirinyaga, Machakos, Kajiado, Garissa, Wajir & Mandera	<b>Murang’a</b> - <i>ACK Mother’s Union</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm
<b>Cluster 7:</b> Other Stakeholders, CSOs, ACIK, Adoption Societies	<b>Nairobi</b> – <i>Kariokor Social Hall</i>	29 <sup>th</sup> – 30 <sup>th</sup> May, 2024	9am – 4pm

### Collection of Public Memoranda

The advertisement for public participation was published on *My Gov.* newspaper, the Ministry of Labour and Social Protection website and the National Council for Children’s Service website, running for 14 days from 14<sup>th</sup> May 2024 to 27<sup>th</sup> May 2024. The Notice was additionally circulated on various social media platforms.

To facilitate public participation effectively, written submissions were invited from individuals, institutions, and organizations. Members of the public were encouraged to share their views, feedback, and recommendations through the email address provided. This approach allowed stakeholders to provide detailed input at their convenience, ensuring that as many voices as possible were heard in the Regulations review process.

### Modes of Public Engagement

The consultation process utilized both online platforms and physical public forums to ensure accessibility for all stakeholders.

1. **Online Engagement** – Virtual meetings and email submissions allowed participants from different locations to contribute their views without geographical limitations. This method facilitated broader participation, especially for those unable to attend physical meetings.
2. **Public Forums** – Physical meetings were held in select regions to engage directly with community members, local leaders, and key stakeholders. These forums provided an opportunity for in-depth discussions, clarifications, and firsthand accounts of kafaalah experiences.

The employment of this hybrid approach ensured that participation was inclusive, accommodating both digital and in-person engagements.

## **G. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS**

This Part considers whether these proposed Regulations are the best form of government action pertaining to matters relating to the *Kafaalah*. The Statutory Instruments Act (Cap 2A) requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

Regulation should be the last resort in realizing policy objectives. There are alternatives, which could come in handy in dealing with certain aspects of social security. The options considered under this part are as follows:

- (a) **maintaining the status quo** where there are no regulations;
- (b) **application of administrative measures** or non-regulatory measures; and
- (c) regulatory measure through the **adoption of the proposed Regulations**

The impact assessment involved evaluating the costs and benefits of implementing the Regulations based on the policy options outlined above. A policy change is considered desirable if it will result in real or potential improvement. This is determined by accumulating its direct and indirect benefits and costs. Based on this philosophy, policy guideline options present strengths and weaknesses and therefore may result in ineffective implementation of the Act. For instance, issuing

policy guidelines or administrative measures without regulations would certainly occasion a sub-optimal result because of limited options for enforcement.

Providing a regulatory option is more practical and sounds effective. However, it is worth noting that all the options were considered and it was found necessary that the regulations to oversee *Kafaalah* arrangement be formulated in order to effectively implement the Act.

## **The Alternatives**

### **1. Option One: The Status Quo**

Maintaining the status quo means that there are no formal regulations for *Kafaalah* arrangement. This means that the *Kafaalah* arrangement will continue to operate informally. This will result in inconsistencies in the administration of *Kafaalah*, leaving children vulnerable to exploitation or inadequate care. The Children Act (Cap 141) requires that Regulations for *Kafaalah* be developed to regulate the practice.

### **2. Option Two: Application of administrative measures**

This is a non-regulatory measure which, if applied, will depend on the goodwill of public officers to implement the provision of the Act. Administrative oversight would include increased government monitoring, issuance of guidelines, and enhanced reporting requirements for those providing *Kafaalah* care. Administrative measures do not have the force of law and may be challenged in a court of law. These proposed Regulations seek to streamline the *Kafaalah* arrangement.

### **3. Option Three: Adopting the proposed regulations**

The development and adoption of these proposed Regulations will ensure full implementation of the Act and more so to facilitate implementation and supervision of *kafaalah* arrangement in Kenya.

The table below outlines the potential costs and implications associated with each option:

	Option	Possible Costs	Possible Benefits Direct	Implication
1.	Status Quo	<ul style="list-style-type: none"> <li>i. No additional costs</li> <li>ii. Potential long-term societal costs due to inadequate child protection</li> </ul>	<ul style="list-style-type: none"> <li>i. Flexibility in arrangements</li> <li>ii. No disruption to current practices</li> </ul>	<ul style="list-style-type: none"> <li>i. Continued risks to child welfare</li> <li>ii. Lack of standardization and oversight</li> </ul>
2.	Application of administrative measures	Moderate costs for training, monitoring and policy adjustments.	<ul style="list-style-type: none"> <li>i. Improved guidance for <i>Kafaalah</i> arrangements</li> <li>ii. standardization of processes</li> </ul>	<ul style="list-style-type: none"> <li>i. Limited legal enforceability leaving gaps in accountability and long-term protection.</li> <li>ii. Potential for inconsistent application</li> </ul>
3.	Adopting the proposed regulations	Higher initial costs for implementation, enforcement and awareness campaigns	<ul style="list-style-type: none"> <li>i. Enhanced child protection</li> <li>ii. Standardized procedures</li> <li>iii. Clear guidelines for all stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>i. Comprehensive legal framework for <i>Kafaalah</i></li> <li>ii. Improved oversight and accountability</li> <li>iii. Better alignment with international child rights standards</li> </ul>

### Cost-Benefit Analysis

The impacts of the Proposed Regulations can be categorized as follows:

Gap / Problem/Issue	Proposed reform from regulations	Estimated costs (KES)	Justification for costs	Estimated benefits (KES)	Justification for benefits
<b>Financial</b>					
Lack of a legal framework to govern <i>kafaalah</i>	Establish a formal legal framework and procedural guidelines for <i>Kafaalah</i> Regulations 1–5 (Definitions, scope, objectives, and legal basis)	Kes. 15M (drafting, stakeholder consultations, dissemination)	Development and rollout of regulations across counties	Up to Kes. 100M per year in reduced litigation and administrative confusion	Ensures consistency and protects all parties legally
<b>Economic</b>					
No structured caregiver application or vetting system	Streamline application, registration, and monitoring systems Regulations 7–10 ( <i>Kafil</i> applies via Imam, vetted by Secretary, registered)	Kes. 25M (IT system, training, digitized forms)	Enables faster, accurate case processing and record-keeping	20% resource savings via efficiency gains	Improved caregiver tracking and placement oversight
Lack of centralized <i>kafaalah</i> data hinders accountability	Develop and maintain a national <i>kafaalah</i> database Regulation 21 (Mandates official national record of placements)	KES 10M setup + 5M/year maintenance	Needed for accurate tracking of child placements	Cuts admin costs by up to 15%, boosts transparency	Streamlines inter-agency collaboration and reporting



Children in crisis lack immediate placement options	Establish emergency kafaalah system using pre-screened <i>Kafil</i> s <b>Regulation 23 (Secretary may authorize emergency placements)</b>	Kes. 10M (screening pool, rapid-response funds)	Ensures children can be placed without delay	Emergency placements reduce risk and trauma by 50%	Improves emergency child protection and continuity
<b>Social</b>					
Lack of defined criteria for <i>Kafil</i> s	Specify eligibility and moral standards for <i>Kafil</i> s <b>Regulation 6 (Minimum requirements for caregivers (age, religion, conduct))</b>	Kes. 30M per year (background checks, vetting, capacity building)	Supports thorough vetting and safeguarding training	40% reduction in child abuse or neglect cases	Better protection for vulnerable children
High prevalence of child abuse due to unvetted caregivers	Implement mandatory background checks and ongoing monitoring <b>Regulation 8 (Suitability assessments including home visits)</b>	Kes. 20M per year (monitoring and evaluations)	Supports social worker visits and <i>Kafil</i> audits	25% reduction in child abuse reports	Increases child safety through accountability

Inadequate post-placement support increases failures	Provide supervision and counseling post-placement <b>Regulation 22 (Mandates home visits and check-ins post-placement)</b>	Kes. 15M per year (officer travel, training, support services)	Covers quarterly visits and emergency support	30% increase in successful, stable kafaalah placements	Promotes child-caregiver integration and trust
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### Risk Identification and Mitigation Strategies

	Risk identification	Risk description	Mitigation strategies	Expected outcome of mitigation strategy
1.	Inadequate assessment of <i>Kafil</i>	Risk of placing a child with an unsuitable caregiver due to insufficient vetting.	Conduct thorough interviews, verify documents, and assess legal, social, and moral competency of the <i>Kafil</i> .	Placement of children in safe, supportive environments with capable caregivers.
2.	Abuse or harm to the child	Risk of physical, emotional, or psychological harm by the <i>Kafil</i> or family members.	Regular supervision visits and immediate investigation of abuse allegations.	Enhanced child protection and reduced cases of neglect or abuse.
3.	Non-compliance with religious or cultural needs	Risk of neglecting the child's religious or cultural practices during placement.	Ensure placement with <i>Kafil</i> s who share the child's cultural and religious persuasion; monitor adherence to these practices.	Preservation of the child's identity and cultural heritage.
4.	Emergency situations affecting placement	Disruption due to family breakup, displacement, or temporary relocation of <i>Kafil</i> .	Implement emergency removal procedures and place the child in a safe alternative environment until conditions stabilize.	Continuity in care and protection for the child during emergencies.

5.	Lack of consent from biological parents or caregivers	Risk of disputes over placement decisions without proper consent.	Obtain written consent from parents/caregivers where possible; seek court direction if consent cannot be obtained.	Legal clarity and minimized disputes regarding placement decisions.
6.	Inability of <i>Kafiil</i> to meet child's needs	Risk of inadequate provision for the child's developmental, emotional, or medical needs.	Provide support services to <i>Kafiils</i> through supervision visits and feedback mechanisms; suspend arrangement if necessary.	Improved care quality and timely intervention to address deficiencies in caregiving.
7.	Discrimination and social stigma	Children under <i>Kafaalah</i> may face discrimination or lack of equal rights.	Advocacy campaigns and legal protections ensuring equal treatment	Greater social inclusion and reduced stigma

## H. COMPLIANCE AND IMPLEMENTATION

It is crucial to establish how adherence to and execution of the proposed Children (Kafaalah) Regulations will be ensured. The Council is responsible for evaluating the strength of the institutional framework that will enforce the Regulation and for developing effective implementation strategies.

The enactment of the proposed Regulations should foster the coordination and supervision of all stakeholders responsible for making arrangements for *kafaalah*. These proposed Regulations will be carried out within the current national legal and institutional framework to streamline procedures promoting the *kafaalah* arrangement in Kenya. The Council, in consultation with the Cabinet Secretary, for matters relating to children affairs will oversee the implementation.

In developing the proposed Regulations in compliance with legal requirements based on the analysis above, the following points are evident:

- (a) there needs to be an appropriate regulatory framework to maintain supervision of activities of all persons or associations assisting in *kafaalah* arrangements.
- (b) for *Kafaalah* processes to be managed effectively, efficiently, and sustainably, the proposed Regulations stipulate the registration of a *kafil*, placement for children in *Kafaalah* and general duties in respect of *Kafaalah* including the review of the terms *kafaalah* arrangement
- (c) regarding Regulatory-Making Authority and the legal mandate, section 215(b) of the Children Act (Cap.141) authorizes the Cabinet Secretary to establish regulations to implement the Act. Consequently, the Cabinet Secretary holds the necessary legislative power to propose these Regulations.

## **I. CONCLUSION**

The proposed Regulations are necessary for the operationalization of the Children Act (Cap. 141) and the actualization of the best interests of the child and is therefore the preferred option. It is clear that the benefits and impact of developing these Regulations by far outweigh any estimated cost of its implementation.

## **J. RECOMMENDATION**

From the foregoing, it is evident that the proposed Children (Kafaalah) Regulations will facilitate effective implementation of the Children Act, and it is recommended that the Regulations be approved.